FILE COPY

Supreme Court of the United States

OCTOBER TERM 1947

No. 523

ARTHUR SHILMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION and GRACE LINE, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

WILLIAM L. STANDARD,
Attorney for Petitioner.

LOUIS R. HAROLDS,
on the Brief.

INDEX

PETITION: PAGE

I—Summary Statement of Matter Involved 1

II—Jurisdiction 3

III—Questions Presented 3

IV—Reasons for Allowance of Writ 4

BRIEF:

I—Facts 9

II—Errors Relied On and Summary of Arguments Specified as Grounds of Appeal 11

III—The opinion of the Circuit Court below is in conflict with the *Hust* case 12

IV—The decision of the Court below is in conflict with a decision of the Court of Appeals of another circuit 14

V—Seamen's wages are in a special category, protected by law, and entitled to liberal interpretations 22

CONCLUSION 25

CASES CITED

Aguilar v. Standard Oil Co. of New Jersey, 318 U. S. 724, 63 Sup. Ct. 930 (1943) 14

Aird v. Weyerhaeuser Steamship Company, 1947 A. M. C. 1503 (decided September 16, 1947) 4, 11, 16

Anderson v. United Fruit Co., 1947 A. M. C. 340 (Municipal Court, New York City) 20

Caldarola v. Eckert, 332 U. S. 155, 67 Sup. Ct. 1569 ..... 15, 20

Cohen v. American Petroleum Transport Corp., 1947 A. M. C. 336 (City Court, New York County) 21

PAGE

Cortes v. Baltimore Insular Line, 287 U. S. 367, 53 Sup. Ct. 173, 174 13

Fink v. Shepard S. S. Co., 1946 A. M. C. 1333 (Oregon Cir. Ct.) 21

Gaynor v. Agwilines, Inc., (D. C. Pa., decided November 26, 1947) 20, 21

Healey v. Sprague Steamship Co. (Sup. Ct. N. Y., Index No. 12274-1947, New York Law Journal, 12/23/47, p. 1856) 18, 21

Hust v. Moore-McCormack Lines, Inc., 328 U. S. 707, 66 Sup. Ct. 1218 (1946), rehearing den. October 21, 1946 ..... 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 20, 21

Martinez v. Marine Transport Lines, Inc., 1947 A. M. C. 529 (Municipal Court of the City of New York) 16, 21

McDonald et al. v. United States, 292 Fed. 593 (C. C. A. 2d, 1923) 24

The Osceola, 189 U. S. 158, 23 Sup. Ct. 485 13

Saluk v. A. H. Bull & Co., 1947 A. M. C. 161 (Municipal Court of the City of New York) 16, 21

Warren v. U. S. and American South African Line, Inc. (S. D. N. Y., Ad. 135-171, ... F. Supp. ....., decided December 8, 1947) 16, 21

Wilder v. Inter-Island Navigation Co., 211 U. S. 239, 29 Sup. Ct. 58 (1908) 24

The William Leishear, 21 F. 2d 862 (D. C. Md., 1927) 24

OTHER AUTHORITIES

Benedict on Admiralty (6th ed.) 22

Judicial Code, Section 240(a) (28 U. S. C. 347) 3

Supreme Court of the United States

OCTOBER TERM 1947

No. .....

ARTHUR SHILMAN,

Petitioner,

VS.

THE UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION and GRACE LINE, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Chief Justice and Associate Justices of the Supreme Court of the United States.

The petitioner, Arthur Shilman, respectfully shows to this Honorable Court:

I

Summary Statement of Matter Involved

Your petitioner filed a suit in admiralty in the United States District Court for the Southern District of New York to recover a balance of $200, wages earned while he was employed as a merchant seaman on the S.S. Eli Whitney.

The suit was filed against both the United States of America and the Grace Line, Inc., and was submitted under an agreed statement of facts, under which it was conceded that the vessel was owned by the United States of America and was operated by Grace Line, Inc., pursuant to the same General Agency Agreement as was before this Honorable Court in *Hust* v. *Moore-McCormack Lines, Inc.*, 328 U. S. 707, 66 Sup. Ct. 1218 (1946), rehearing den. October 21, 1946.

Following an appeal from a decision of the United States District Court, dismissing the suit, the Circuit Court of Appeals for the Second Circuit, on December 4, 1947, ruled that petitioner was entitled to a decree for $200 wages, as against the United States of America, but it dismissed the suit as against Grace Line, Inc., on the ground that the *Hust* decision gave seamen a remedy against the so-called General Agent, as employer, only in tort actions, and not in contract actions.

Having been successful in obtaining a decree against the Government for the full $200 wages involved, we would normally have been content with the result, particularly because of the great volume of work and expense which had been required to obtain a favorable ruling. Unfortunately, however, in dismissing the suit as against Grace Line, Inc., as General Agent, the Circuit Court of Appeals has now set a precedent, repudiated elsewhere, which suddenly jeopardizes countless numbers of seamen's contract cases against such steamship companies, now pending in the various Federal and State Courts—suits which if similarly dismissed as against the so-called General Agent, will in many instances be outlawed by the two-year Statute of Limitations applicable in suits against the Government.

This petition is filed because the decision herein enunciates a doctrine which appears to be in conflict with the reasoning of a decision of the United States Supreme Court (the *Hust* case, supra), and because it involves an

important question of Federal law as to which there is a conflict between the Second and Third Circuit Courts of Appeal, and which has not been, but should be, squarely resolved and settled by this Court.

II

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (Tit. 28, U. S. C. Sec. 347).

The decision of the Circuit Court of Appeals in the instant case was rendered on December 4, 1947, and the mandate was entered on December 22, 1947.

III

Questions Presented

1. Where a seaman is employed on a vessel owned by the United States of America and operated by a private steamship company as General Agent, does the seaman have the right to sue the private operating company, the so-called General Agent, for wages earned during the voyage, or is he confined only to a suit against the United States, under the Suits in Admiralty Act?

2. Is the decision rendered by this Honorable Court in *Hust* v. *Moore-McCormack Lines, Inc.*, 328 U. S. 707, 66 Sup. Ct. 1218 (1946), rehearing den. October 21, 1946, to be construed as limiting the right of seamen to sue the "General Agent", as employer, only in actions based on tort, and as depriving them of that right in actions based on contract?

IV

Reasons for Allowance of Writ

Your petitioner advances the following reasons why this Honorable Court should grant the prayer of his petition:

(a) The decision of the Circuit Court of Appeals for the Second Circuit appears to be directly opposed to the majority opinion, written by Mr. Justice Rutledge, in the *Hust* case, supra, in which this Honorable Court expressly stated as follows at page 719:

> "True, the decision applies specifically only to Jones Act proceedings but it is equally applicable to all other maritime rights and remedies dependent upon existence of the 'employer-employee' relation such as the right to maintenance and cure, etc."

There would appear to be no reason why seamen should be given the right to sue the so-called General Agent, as employer, in tort cases, only to deprive them of that right in contract cases. Particularly should that be true in a seaman's suit to recover earned wages—such wages having always been the subject of special Congressional enactments and judicial pronouncements for the benefit and protection of these "wards of the court".

(b) Further, the decision of the Circuit Court of Appeals for the Second Circuit, in the instant suit, is directly opposed to a decision rendered by the Circuit Court of Appeals for the Third Circuit, entitled *Aird* v. *Weyerhaeuser Steamship Company,* 1947 A. M. C. 1503 (decided September 16, 1947). In that suit the Circuit Court of Appeals for the Third Circuit ruled that a seaman, employed on a ship owned by the United States of America, and operated by a private company pursuant to the usual General Agency Agreement, may maintain his suit against

the private company, as his employer, not only in tort actions, but also in actions arising out of contract.

(c) In reliance upon this Honorable Court's ruling in the *Hust* case, numerous seamen have filed suits solely as against the so-called General Agent, whom they regarded as their employer; and if the decision of the Circuit Court of Appeals for the Second Circuit is to stand, it would mean that hundreds, and perhaps thousands, of small wage, maintenance and loss of personal effects cases, which have been filed against the General Agents in various State and Federal Courts, will have to be discontinued or dismissed. It further means that such suits will then have to be reinstituted by the seamen in the various Federal Courts as against the United States of America under the Suits in Admiralty Act, assuming that they are not barred from doing so by the two-year Statute of Limitations contained therein. In the *Hust* case this Honorable Court stated that it did not intend to bring about any such result, as it felt that the General Agent, as their employer, was amenable to suits by seamen.

(d) There are at the present time pending in the Courts, both Federal and State, throughout the United States, an undetermined and vast number of cases where this question is presented, and until this Honorable Court shall lay down an authoritative determination of that question there will continue to exist a conflict of authority, resulting in conflicting rulings in different parts of the United States interpreting the same Federal law.

(e) The issue presented here involves a Federal question of substance not heretofore squarely determined, but which should be finally passed upon by the United States Supreme Court.

V

For the reasons advanced in the brief supporting this application, your petitioner is advised and believes that the determination of the Circuit Court of Appeals for the Third Circuit properly interprets the law involved, and that the determination of the Circuit Court of Appeals for the Second Circuit, in the instant case, was erroneous, insofar as it held that a steamship company, operating a vessel for the United States under a General Agency Agreement, is not subject to suits by seamen to recover earned wages.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record of all proceedings had in said Court in the above entitled cause, to the end that said cause may be reviewed and determined by this Court as provided by law.

Respectfully submitted,

ARTHUR SHILMAN,
Petitioner.

STATE OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:
COUNTY OF NEW YORK

WILLIAM L. STANDARD, being duly sworn, says that he is the attorney for ARTHUR SHILMAN, the petitioner herein; that he has read the said petition subscribed by him and that the facts therein stated are true to the best of his knowledge, information and belief.

WILLIAM L. STANDARD.

Sworn to before me this
12th day of January, 1948.

I hereby certify that I have examined the foregoing petition. In my opinion the petition is well founded and the cause is one in which the prayer of the petitioner should be granted by this Honorable Court.

WILLIAM L. STANDARD,
Attorney for Petitioner.

Supreme Court of the United States

OCTOBER TERM 1947

No. .....

ARTHUR SHILMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION and GRACE LINE, INC.,

Respondents.

PETITIONER'S BRIEF ON APPLICATION FOR WRIT OF CERTIORARI

I

Facts

The petitioner sued in admiralty to recover $200 wages earned by him as a member of the crew of the merchant vessel Eli Whitney. The case was submitted on an agreed statement of facts, which may be summarized as follows:

The S.S. Eli Whitney was owned by the United States and operated by Grace Line, Inc., as agent, pursuant to the usual General Agency Agreement. The petitioner was employed on the vessel as a civilian merchant seaman, and while so employed earned the sum of $406.86 as wages between May 25, 1943 and August 1, 1943.

On or about July 31, 1943, while the vessel was in the Port of Tunisia, North Africa, then an active theatre of war, the petitioner was arrested by personnel of the United States Army on the charge that he had allegedly violated the 93rd Article of War, because he was said to have unlawfully taken an adding machine from the office of the French Navy on July 25, 1943, while he was ashore. On August 2, 1943, he was arraigned and tried in Tunisia upon this charge before a Special U. S. Army Court-Martial. He pleaded not guilty, but was found guilty and sentenced to pay a fine of $200 to the United States and to be confined at hard labor for three months. He served his prison sentence, but never paid the fine. On November 16, 1943, he received from the respondent Grace Line, Inc., $206.86, the amount of his wages, less the fine of $200, to recover which he filed a libel in admiralty, both against the United States and Grace Line, Inc. The respondents filed an answer denying any right of recovery because of petitioner's indebtedness for the unpaid fine to an amount equivalent to the balance of his wages.

The District Judge sustained this defense and rendered an opinion dismissing the libel as against each respondent. From the decree entered on this decision the petitioner appealed.

The Circuit Court of Appeals for the Second Circuit ruled that seamen's wages are protected by special provisions of law, and that petitioner was entitled to a decree for his $200 wages as against the United States of America. However, it dismissed the suit as against Grace Line, Inc., on the ground that the *Hust* decision gave seamen a remedy against the so-called General Agent, as employer, only in actions based on tort, and not in actions based on contract.

II

Errors Relied on and Summary of Arguments Specified as Grounds of Appeal

1. The decision of the Circuit Court of Appeals for the Second Circuit in the instant case appears to be opposed to the decision of this Honorable Court in *Hust* v. *Moore-McCormack Lines, Inc.*, 328 U. S. 707, 66 Sup. Ct. 1218 (1946), rehearing den. October 21, 1946.

2. The decision of the Circuit Court of Appeals for the Second Circuit in the instant suit is directly opposed to a decision rendered by the Circuit Court of Appeals for the Third Circuit in the case of *Aird* v. *Weyerhaeuser Steamship Company*, 1947 A. M. C. 1503 (decided September 16, 1947).

3. There appears to be no rational reason why seamen should be deprived of the right to sue the General Agent, as their employer, in actions to recover earned wages when this Honorable Court has recognized their right to sue such General Agent, as employer, in actions to recover damages for personal injuries based on tort, in which the right to unearned wages is recognized as part of the measure of damages.

4. Unless certiorari is granted, and unless the decision of the Circuit Court of Appeals for the Second Circuit is reversed, there will continue to be confusion and uncertainty in every case in which a seaman has instituted his suit as against the General Agent, excepting only, perhaps, suits filed to recover damages for personal injuries under the Jones Act. In this jurisdiction in particular, pending suit against the so-called Agent based on contract may have to be discontinued or dismissed if this decision is allowed to stand. These will then have to be reinstituted

against the Government in the various Federal Courts under the Suits in Admiralty Act, assuming such action is not already barred by the two-year Statute of Limitations contained in that Act.

III

The opinion of the Circuit Court below is in conflict with the *Hust* case.

In dismissing the suit as against Grace Line, Inc., the Circuit Court below in the instant case reasoned as follows:

(a) Applying the ordinary rules of agency, the steamship company was merely an agent for the United States, disclosed by the shipping articles as principal, and, therefore, could not be held liable (Transcript of Record, pp. 57-58);

(b) Under the *Hust* decision a steamship company acting as General Agent for the United States "was only held to be subject to the obligations of an employer so as to be liable to seamen in tort for acts of negligence connected with the operation of the vessel" (Transcript of Record, p. 58);

(c) The United States Supreme Court in the *Hust* case did not "decide that the agent was so far the employer as to be liable to the seamen for their wages or other contractual obligations" (Transcript of Record, p. 58).

Let us compare the above reasoning of the Circuit Court in this case with the reasoning of this Honorable Court. We will find that these cannot be reconciled, for, in the *Hust* case, this Honorable Court held in the majority opinion:

(a) The Oregon Court, which had dismissed *Hust's* case, was in error in assuming that "the case would be controlled by the common-law rules of private agency. * * *"

No such application of the common-law control test can be justified in this temporary situation unless by inversion of that wisdom which teaches that "the letter killeth but the spirit giveth life";

(b) Although, for the better prosecution of the war effort, the General Agency Agreement may have made merchant seamen the employees of the United States technically, in fact the private steamship companies carried out the same functions with reference to the ship and crew as they had done formerly. The right of seamen to look to the company as their employer was so well established in law and custom that it was not to be presumed that Congress intended to change this relationship either by the Suits in Admiralty Act or the Clarification Act. To exonerate the steamship companies from liability to their seamen would lead to confusion, and cause many to lose remedies where they had relied on a wrong mode of relief, particularly where the two-year Statute of Limitations contained under the Suits in Admiralty Act had passed. In coming to this conclusion the majority opinion did not consider it necessary to hold that the General Agent was an owner *pro hac vice;*

(c) In order that there might be no misunderstanding as to the broad basis behind the reasoning of the Court, the majority opinion stated, in the *Hust* case, at page 719:

> "True, the decision applies specifically only to Jones Act proceedings. But it is equally applicable to all other maritime rights and remedies dependent upon existence of the 'employer-employee' relation, such as the right to maintenance and cure, etc."

The right to maintenance and cure, of course, is not dependent upon the Jones Act, but arises from the General Maritime Law, and is based on the employment contract.

The Osceola, 189 U. S. 158, 23 Sup. Ct. 485.
Cortes v. *Baltimore Insular Line,* 287 U. S. 367, 53 Sup. Ct. 173, 174.

Aguilar v. *Standard Oil Co. of New Jersey*, 318 U. S. 724, 63 Sup. Ct. 930 (1943).

The right to maintenance and cure includes the right to seek wages till the end of the voyage. And are not rights to claim maintenance and wages among the best established "maritime rights and remedies dependent upon the existence of the 'employer-employee' relation"?

When the majority opinion of the United States Supreme Court in the *Hust* case stated that the decision was intended to apply not only to Jones Act proceedings, but to all other maritime rights and remedies dependent upon the existence of the employer-employee relation, such as the right to maintenance and cure, etc., was that not intended to include a seaman's claim for wages?

It is clear that the Court, in the *Hust* case, realized that its decision would be construed as meaning that seamen are the employees of the operating agent, and that it intended its decision to have that very effect. Any other result would mean that a seaman, suing a steamship company on two causes of action, one to obtain damages under the Jones Act, and the other to obtain maintenance and cure or earned wages, would find one cause of action sustained and the other dismissed, on the ground that he had a wrong party-defendant!

It is respectfully submitted that the reasoning which motivated the decision of the lower Court in the instant case cannot be reconciled with the reasoning which motivated this Honorable Court in its decision in the *Hust* case.

IV

The decision of the Court below is in conflict with a decision of the Court of Appeals of another circuit.

Following the decision in the *Hust* case, seamen's suits based on contract, as well as tort, were filed against the

various steamship companies, which operated vessels for the United States pursuant to General Agency Agreements. It was generally felt this procedure was proper.

However, on June 23, 1947, this Honorable Court rendered an opinion in a case entitled *Caldarola* v. *Eckert,* 332 U. S. 155, 67 Sup. Ct. 1569, and it has now become fashionable for attorneys representing steamship companies to rely upon that case for the purpose of defeating seamen's suits filed against the General Agent. This, despite the fact that the *Caldarola* case had nothing to do with seamen, but merely involved the question whether a person, such as a stevedore, who was employed by a third party, could recover from the General Agent for personal injuries caused by a defective boom. The longshoreman's theory was that, under the *Hust* case, the Agent was to be deemed an owner of the vessel, *pro hac vice.* This Honorable Court pointed out, in ruling against the stevedore's contention, that the majority opinion of the *Hust* case did not hold the steamship company to be an owner, *pro hac vice,* but simply held that a *seaman,* for the reasons already set forth, could look to the Agent as his employer. Unfortunately, in distinguishing the *Hust* case from the situation then before it, this Honorable Court used the following language in the *Caldarola* decision:

> "We there held that under the Agency contract the Agent was the 'employer' of an injured seaman as that term is used in the Jones Act, and a seaman could therefore bring the statutory action against such an 'employer'."

Ever since the use of that language by this Honorable Court steamship companies have been urging that the *Caldarola* case has so limited the *Hust* decision that the latter is only to be applied so as to permit seamen to sue the General Agents as their employer solely in actions to recover damages for personal injuries under the Jones Act.

However, this defense was raised and repudiated, correctly, we think, in *Aird* v. *Weyerhaeuser Steamship Company,* 1947 A. M. C. 1503 (C. C. A. 3rd, decided September 16, 1947). The steamship company there, as in the instant case, attempted to avoid liability to a seaman, who was suing for wrongful discharge, on the ground that the Government, and not the company, was the seaman's employer. In repudiating this contention the Court stated at page 1508:

> "We prefer to take the position that the Clarification Act intended to provide and did provide that the seaman might assert against a private shipowner, serving as General Agent every contract right as well as every tort claim which he could have asserted had it not been for 'the temporary wartime character of his employment.' We conclude, therefore, that Aird has the *locus standi* to maintain his suit against Weyerhaeuser as his employer."

The same result had previously been reached in actions filed in lower State Courts.

Saluk v. *A. H. Bull & Co.,* 1947 A. M. C. 161 (Municipal Court of the City of New York). Action for breach of contract of bailment.

Martinez v. *Marine Transport Lines, Inc.,* 1947 A. M. C. 529 (Municipal Court of the City of New York). Action to recover maintenance and wages. An appeal taken by the steamship company is pending.

In *Warren* v. *U. S. and American South African Line, Inc.* (S. D. N. Y., Ad. 135-171, ... F. Supp. ....., decided December 8, 1947), Judge Medina also had the same question before him in a seaman's suit to recover maintenance from the General Agent which operated the vessel for the Government. The decision of the Circuit Court of Appeals in the instant case, which had only been decided a few days previously, over the week-end, had perhaps not yet

been made known to Judge Medina, and he ruled in favor of the seaman, and against the General Agent, in the following language:

> "The question is whether the general agent is an employer for the purposes of liability for maintenance and cure. The reasoning of the *Hust* case would seem persuasive that it is. Respondent, however, attempts to distinguish that case because it was a suit for indemnity under the Jones Act, whereas this is not.
>
> "I cannot make this distinction. If a general agent is an employer for the purposes of liability in tort under the Jones Act, it does not seem far-fetched to consider him an employer for the purposes of liability for maintenance and cure, that pervasive incident of the maritime contract, *Cortes* v. *Baltimore Insular Line,* 287 U. S. 367, 371 (1932), antedating the Jones Act by hundreds of years. *The Osceola,* 189 U. S. 158, 169-175 (1903). It would be incongruous to say that the Jones Act has by implication so weakened it as to make it incapable of independent suit. 1 Benedict, Admiralty 258 (6th ed. 1940). There are authorities for this view, both in the Federal, *Broadbent* v. *United States,* 1947 A. M. C. 749 (E. D. Pa. 1947), and State courts. *Moss* v. *Alaska Packers Association,* 70 Cal. App. 2d 857, 160 P. 2d 224 (1945); *Martinez* v. *Marine Transport Line,* 1947 A. M. C. 529 (N. Y. City Municipal Court 1947).
>
> "Nor does *Caldarola* v. *Eckert,* 332 U. S. 155 (1947), require a different conclusion. There a stevedore was injured while working aboard a vessel with respect to which an agent was functioning under the usual General Agent Service Agreement. The general agent had nothing to do with his being hired, as he was the employee of a stevedoring concern under an independent contract with the government. The Supreme Court held that this agreement did not impose upon the agent 'duties of care to third persons, more particularly to a stevedore under employment of a concern unloading the vessel pursuant to a contract with the United States' (332 U. S. at 159). Libellant here is not a business invitee, a third person, but a seaman procured by the general agent under the Service Agreement. He is more like Hust than Caldarola."

The most recent decision on this question is *Healey* v. *Sprague Steamship Co.* (Sup. Ct. N. Y., Index No. 12274-1947, New York Law Journal, 12/23/47, p. 1856). In that case Mr. Justice Steuer refused to follow the decision of the Circuit Court of Appeals in the instant case and awarded an injured seaman maintenance, wages until the end of the voyage, and reimbursement for lost personal effects, although the suit was filed solely against the General Agent in a State Court. Because the decision has not yet appeared in the published reports, we take the liberty of setting forth the most important portion thereof:

> "The gravamen of the decision (Hust) was that prior to the acts by which shipping was acquired by the government, seamen had rights against the operator of the ship and that before the change of their status to government employees, by virtue thereof could deprive them of such rights, there had to be clear statutory authority therefor. The holding is in effect that the agent as regards his tort liability to the seaman is the operator of the ship. A later holding (Calderola v. Eckert, 332 U. S. 155) defined the latter proposition as the holding and specifically determined that it is a matter of state law as to whether the control of the agent is sufficient to impose liability for injuries to business invitees of the ship. As maintenance and cure is an incident of contract and not a statutory right, the Hust case can hardly be controlling. No such question of contract has arisen in the state courts. There have been decisions in the United States courts. In two of them the issue was decided on the question of agency (Shillman v. U. S. and Grace Lines, ... Fed. 2d ....., and Lewis v. U. S. Navigation Co., 57 Fed. 2d 652), the test of liability being whether the agent revealed the agency to the plaintiff. The third decision (Warren v. U. S. and American South African Line, Inc., ... Fed. 2d .....) was based on the fact that despite the origin of maintenance and cure being contractual, its nature was so allied to compensation for injuries that to deny it would be incongruous with the Hust decision. Naturally, it would not be less incongruous if the agency

were revealed, so this decision does not represent an accord with the other two.

"It is difficult to see how the agency principle is at all involved in the question. The contract is the shipping article. It is not signed by the agent company, but by the master (i.e., the captain) of the vessel. He is an employee of the United States and there is nothing in the document to show that he acted, or was authorized to act, in any other capacity. Furthermore to hold on this basis is to mistake the shadow for the substance. The grounds for holding an undisclosed agent as a principal are that by his concealment the agent induces the other party to contract on the agent's responsibility and that in case of breach he prevents the other party from knowing against whom his rights lie. Neither of these grounds exist. In the Hust case the court took occasion to point out how seamen are hired. The agent notifies the union; the latter sends the men to the vessel. In the case at bar it appears in the testimony that the plaintiff gathered no impression from the shipping articles as to who his employer was and only after being assigned to duty on the ship was he told the name of the agent company. So that he was not induced to sign on in the belief that defendant was the other contracting party. As to being unaware of the proper party to sue for a breach, it is true that he may have been unaware of what was general knowledge, viz., that all shipping was in government hands. But no one was better informed of the situation than his attorney and few plaintiffs have been more ably represented. The conclusion is that to answer the question of defendant's responsibility by whether or not the word 'agent' appeared in the shipping articles is sound neither legally nor actually.

"It is true that to deny maintenance and cure in a situation where responsibility under the Jones Act exists would be incongruous. But this is only so where the courts are in the same jurisdiction, conforming to the same pattern of law. When the Calderola case was before the Court of Appeals, that court pointed out that it was unnecessary to the decision to determine whether if the Hust case decided

anything beyond liability under the Jones Act, it should be followed in this state and that question was specifically left open. On the particular question involved here the determination depends solely on the interpretation of the General Agency Contract. On this subject a contract with the United States, the United States Supreme Court is the final arbiter (S. R. A. Inc. v. State of Minnesota, 327 U. S. 558). While the instant conclusion depends on a prediction, arrived at through deduction, as to what two appellate courts will decide, and hence is necessarily tenuous in its nature, no other means is apparent. That conclusion is that a parity of reasoning requires the holding that the General Agency Contract imposes liability on the agent for seaman's maintenance and cure."

On the other hand, apart from the instant case, suits against the General Agent have been dismissed in the following cases on the ground that only the United States of America is the proper party-defendant:

Gaynor v. *Agwilines, Inc.,** (D. C. Pa., decided November 26, 1947). Action to recover wages, maintenance, cure and for lost personal effects.

Anderson v. *United Fruit Co.*, 1947 A. M. C. 340 (Municipal Court, New York City). Seaman's action to recover wages.

There has also been a conflict of opinion, in cases arising in the lower Federal and State Courts, as to whether the *Hust* decision is to be limited to causes of action which arose prior to the adoption of the Clarification Act (March 24, 1943).

---

* Although it reached that conclusion, the Court, in the *Gaynor* case, differentiated the *Caldarola* decision from the *Hust* case, in the following language:

"In Caldarola v. Eckert, ... U. S. ..... (decided June 23, 1947), the plaintiff was a longshoreman and since the Clarification Act concerns 'seamen', the Act was of no consequence."

In the *Gaynor* case, supra, the Pennsylvania District Court held that where a cause of action arose subsequent to March 24, 1943, the date of the adoption of the Clarification Act, a seaman's suit arising out of employment on a vessel of this type could only be instituted against the United States of America and not against the General Agent. On the other hand, the following cases hold that the reasoning in the *Hust* case justifies seamen in filing suits against the General Agents, irrespective of whether their causes of action arose prior or subsequent to the adoption of the Clarification Act.

Fink v. *Shepard S. S. Co.*, 1946 A. M. C. 1333 (Oregon Cir. Ct.).

Cohen v. *American Petroleum Transport Corp.*, 1947 A. M. C. 336 (City Court, New York County).

Saluk v. *A. H. Bull & Co.*, 1947 A. M. C. 161.

Martinez v. *Marine Transport Lines, Inc.*, 1947 A. M. C. 529.

Warren v. *U. S. & American South African Line, Inc.* (S. D. N. Y., Judge Medina, Ad. 135-171, decided December 8, 1947) ..... F. Supp. .....

Healey v. *Sprague Steamship Co.* (Sup. Ct. N. Y., Index No. 12274-1947, New York Law Journal, 12/23/47, p. 1856).

From all of the foregoing it at once becomes readily apparent that serious differences of judicial opinion have arisen concerning the effect of this Honorable Court's decision in the *Hust* case. But the most important difference is that which has arisen between the Circuit Court of Appeals for the Third Circuit on the question whether actions against the General Agent, as employer, are to be permitted merely when based on tort, and denied when based on contract.

V

Seamen's wages are in a special category, protected by law, and entitled to liberal interpretations.

Actually, the question raised by this petition is whether seamen's wage suits are to be placed in a less favored category than seamen's personal injuries suits. It is believed that an examination of the authorities on this question can lead to no conclusion but that seamen's wage suits are entitled to as great, if not greater, protection than any other aspect of their rights arising out of the employer-employee relationship.

In *Benedict on Admiralty* (6th Ed., A. W. Knauth) the following is stated at page 282:

> "The character of seamen and the nature of their employment have induced Congress to provide specifically for the collection of their demands. Seamen have always been considered as wards of the admiralty. The wages of their perilous service have been by all nations highly favored in the law. It was the great considerations of policy and justice connected with that humble but most useful class of men that induced the English common law courts to leave to the admiralty the undisputed cognizance of suits for seamen's wages and to make those wages a lien upon the last plank of the ship. A cheap and summary mode has, therefore, been provided, for hearing controversies usually of small amount but of very great importance to the seamen."

Some of the special statutes which were enacted for the protection of seamen's wages were expressly recognized in the decision of the Circuit Court of Appeals below, in ruling that Shilman was entitled to recover his wages against the Government, in the following language:

> "A seaman making foreign voyages is entitled to his pay within twenty-four hours after the cargo is

discharged, or within four days after the seaman is discharged, whichever happens first. Failure to pay without sufficient cause subjects the master or owner to an extra payment of double wages for each day's delay (46 USC 596).

"In port, a seaman is entitled to demand one-half of his unpaid wages, and when his employment is at an end, he must receive the remainder of the wages due. So important did Congress feel this provision was, that the section was expressly made applicable not only to American seamen, but also to foreign vessels in United States harbors (46 USC 597).

"Except as expressly provided by law, a seaman cannot give up any right to wages, or any remedy for the recovery of same, even by agreement (46 USC 600).

"His wages are not subject to attachment or arrestment, even by court action, except that a court is given the limited power to order wages withheld, only for the support of a wife and minor children; and no advance assignment of wages is valid, except for payment of an allotment to a relative, made out in the manner authorized and prescribed by law (46 USC 601).

"Section 682 (46 USC) provides that where a seaman is discharged in a foreign port, it must be in the presence of the United States Consul, and, even before the actual signing off, the master must make 'payment of the wages which may then be due said seaman.'

"Section 683 (46 USC) provides that if the consul fails to require all the wages to be paid to the seaman when there is to be a discharge in a foreign port, the consul himself becomes liable to the United States 'for the full amount thereof'.

"Section 685 (46 USC) requires the consul to make sure that there is paid at the time of discharge all wages which are due (plus extra wages, in the event of certain violations of the seaman's contract).

"The above sections look towards payment to the seaman by his employer, at the termination of the employment, of all of his earned wages, without any deductions except those which are expressly authorized by statute."

Taking cognizance of this legislative scheme, this Court in *Wilder* v. *Inter-Island Navigation Co.*, 211 U. S. 239, 29 Sup. Ct. 58 (1908), ruled that the wage statutes which were enacted to protect seamen, whose improvidence and prodigality had led to legislative provisions in their favor, were to be liberally interpreted with a view to affording them maximum protection.

See also *McDonald et al.* v. *United States,* 292 Fed. 593 (C. C. A. 2d, 1923), where Circuit Judge Manton said at page 594:

> "The courts are accustomed to consider seamen as peculiarly entitled to their protection, and contracts for their services will not be construed with the strictness which obtains at common law. Boulton v. Moore (C. C., 14 Fed. 922). The courts will scrutinize these contracts closely, to ascertain whether any imposition is made on the seamen, and any obscurity, uncertainty, or ambiguity will be resolved in favor of the seamen and against the master."

Finally, seamen's wage claims are so favored in law that they have the highest priority over all other maritime liens, irrespective of time, higher even than maritime tort liens.

> *The William Leishear,* 21 F. 2d 862 (D. C. Md., 1927).

In the light of all the foregoing it would certainly seem "incongruous" to hold that seamen may sue the General Agents to recover damages for personal injuries based on tort (recovering unearned wages as an element of damages), and yet be unable to sue for earned wages because the suit is based on contract, and not tort.

CONCLUSION

A writ of certiorari should issue to the Circuit Court of Appeals for the Second Circuit so that a decision may be obtained on the important question whether merchant seamen, employed on ships owned by the United States of America, and operated by private steamship companies pursuant to General Agent Agreements, may look to these "Agents" as their employers, not only in suits based on tort, but also in suits based on contract. The determination of this question is of great importance in Maritime Law, not only because of the many cases which were filed during, and immediately following the war, but also because the Government has announced its intention of continuing to operate merchant vessels for some time in the future. Lest the rights of many seamen be wiped out completely, it is of the greatest importance that the conflict of decisions should be resolved.

Respectfully submitted,

WILLIAM L. STANDARD,
Attorney for Petitioner.

LOUIS R. HAROLDS,
on the Brief.

Supreme Court of the United States

OCTOBER TERM 1947.

No. 523.

ARTHUR SHILMAN,

Petitioner,

—against—

THE UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION and GRACE LINE, INC.,

Respondents.

REPLY BRIEF FOR PETITIONER.

This brief will address itself to two new issues raised by the brief for respondents filed in opposition to the petition. The first is that since the Government intends to pay the judgment rendered against it, petitioner's cause of action is extinguished; the second, that the relationship between respondent Grace Line, Inc., and the vessel, differs from the relationship considered in *Hust* v. *Moore McCormack Lines Inc.*, 328 U. S. 707.*

* The respondents' brief also introduces the novel suggestion, never before urged, that petitioner is to be regarded as a civil service employee (Br., pp. 2, 5). It supports this position by reference to Civil Service Rules, Schedule A, Sec. XXICI), promulgated by Executive Order No. 9247, which declares that among those excluded from the competitive civil service are "all positions on Government owned ships operated by the U. S. Maritime Commission." The vessel on which petitioner served was operated by Grace Line, Inc., as General Agent for War Shipping Administration, not the Maritime Commission, so it is difficult to understand the significance of the citation of the Civil Service Rules. Executive Order No. 9247, to which reference is also made, is not at all in point, and does not touch upon either the Maritime Commission or War Shipping Administration. Moreover, any doubt which can survive is laid at rest by the Clarification Act of 1943 (Act of March 24, 1943, sec. 1(a); Tit. 50 U. S. C. War App. Sec. 1291(a)) which specifically excludes employees on War Shipping Administration vessel from Civil Service benefits, and continues their rights as privately employed seamen. If Respondents' contention is made seriously, then they have supplied an additional reason why this Court should grant certiorari, since the implications of considering such merchant seamen as civil service employees, are far reaching.

I.

THE CAUSE OF ACTION IS NOT EXTINGUISHED.

The decree in this case grants the petitioner relief against the United States, but dismisses the libel as against the Grace Line, Inc. The petitioner seeks review only of so much of the decree as is adverse to him. He is obviously not concerned with that portion of the decree favorable to him. The brief in opposition, however, is on behalf of both the United States and Grace Line Inc. It is difficult to understand what interest the United States asserts. A party who does not appeal, and against which an appeal is not taken will not, as a rule, be heard.

The Government declares that it does not intend to seek review of the decree rendered against it, and that it will satisfy the judgment against the Government "in due course." This naked statement is the foundation of its contention that petitioner's cause of action against Grace Line, Inc. is extinguished. This assumes (1) that a mere statement of intention, is the equivalent of the accord and satisfaction which was entered into after judgment, leading this Court to dismiss the appeal in *Dakota County* v. *Glidden,* 113 U. S. 222, or (2) that there was unequivocal submission to the judgment by the petitioner which led to the same result in *Little* v. *Bowers,* 134 U. S. 547. The differences are, of course, apparent. In *Dakota County* v. *Glidden,* the very parties to the appeal adjusted their differences by agreement. In *Little* v. *Bowers,* the petitioner, in effect, abandoned his appeal, by a voluntary satisfaction of the judgment. In both cases, there was complete execution.

Respondents' second assumption is that the petitioner stands in the same footing with respect to a decree against the United States, as he does with respect to a decree against Grace Line, Inc. This is not, of course, accurate. To cite one difference, the rate of interest on a money judgment against the United States is limited to four percent annually from the date of the decree (28 U. S. C. A. § 765); against

others it is not so limited. Moreover, there is no effective manner in which the petitioner can enforce his judgment against the United States; while he would have the usual right of speedy execution against Grace Line, Inc. without any need for awaiting the sovereign's pleasure in deciding when it may be willing to make payment.

The petitioner's claim remains unsatisfied. He has not been paid from any source. But the mere possibility that he will be paid by one party does not pre-check him from proceeding against the other, especially since his remedies are not identical. *Fifth Avenue Bank of N. Y.* v. *Hammond Realty Co.*, 130 Fed. (2d) 993, cert. den. 318 U. S. 765 (7th Cir. 1942). No prejudice can result to either respondent. To the extent that petitioner satisfies his decree against one, the other is benefited. *Fifth Avenue Bank of N. Y.* v. *Hammond Realty Co., supra*, 994.

II.

HUST v. MOORE McCORMACK LINES, INC., 328 U. S. 707, CONTROLS THE RELATIONSHIP OF THE PARTIES.

The brief in opposition suggests that the respondent Grace Line, Inc. was merely a "ship's husband", and not a General Agent such as was considered in the *Hust* case. The fixing of the obligation of the General Agent in that case was on the basis of the General Agency Agreement. The stipulation of facts herein (R. 10, 15) describes the status of Grace Line, Inc. in terms of that agreement, which is identical with the one involved in the *Hust* case. What this Court found with reference to the obligation of the General Agent in that case must, *a fortiori* apply here.

CONCLUSION.

The reasons why this petition should be granted need not be reiterated here. But brief mention should be made of the great importance of expeditious disposition of such causes of action. Unless the right to look to the General Agent for payment of wages, as well as for damages for personal injuries, is enforced, all such claims, universally considered preferred causes, will be remitted to the Suits in Admiralty Act in the Federal Courts. The congested condition of the Admiralty Calendar, especially in United States District Court for the Southern District of New York, has long been a matter of profound concern. (See Editorial, New York Times, February 7, 1948, p. 14.) A decision in this case, reversing the decree dismissing the libel against Grace Lines can contribute materially to a solution of that problem.

Respectfully submitted,

WILLIAM L. STANDARD,
Attorney for Petitioner.

LOUIS R. HAROLDS,
HERMAN ROSENFELD,
On the Brief.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	5
Conclusion	14

CITATIONS

Cases:	
A. Heaton, The, 43 Fed. 592	11
Aird v. *Weyerhaeuser S. S. Co.*, 1947 A. M. C. 1503 (C. C. A. 3), decided September 16, 1947	13
Bishop v. *Shepherd*, 23 Pick (Mass.) 492	11
Brady v. *Roosevelt S. S. Co.*, 317 U. S. 575	10
Bronde v. *Haven*, 4 Fed. Cases 212	11
Caldarola v. *Eckert*, 332 U. S. 155	10
Carroll v. *United States*, 133 F. 2d 690	10
Coffman v. *Breeze Corporations*, 323 U. S. 316	8
Conlon v. *Hammond Shipping Co.*, 55 F. Supp. 635	11
Dakota County v. *Glidden*, 113 U. S. 222	6
Everett v. *United States*, 277 Fed. 256, affirmed, 284 Fed. 203, certiorari denied, 261 U. S. 615	11
Hust v. *Moore-McCormack Lines, Inc.*, 328 U. S. 707	8, 9, 12
Little v. *Bowers*, 134 U. S. 547	6, 8
New Orleans v. *Emsheimer*, 181 U. S. 153	6
Pease v. *Rathbun-Jones Eng. Co.*, 243 U. S. 273	6
Temple v. *Turner*, 123 Mass. 125	11
Tyler v. *Judges of Court of Registration*, 179 U. S. 405	7
Statutes:	
Suits in Admiralty Act, 1920 (41 Stat. 525; 46 U. S. C. 741 *et seq.*)	12
46 U. S. C. 592, 594, 596, 599	11, 12
War Shipping Administration (Clarification) Act of March 24, 1943, c. 26, 57 Stat. 45, 50 U. S. C. App., Supp. V, 1291	4, 12
Miscellaneous:	
Civil Service Rules, Schedule A, Sec. xxi (1), 7 F. R. 2, 837; 5 C. F. R., 1943 Cum. Supp. p. 1488	5
Executive Order No. 9004, 7 F. R. 2	5
Executive Order No. 9247, 7 F. R. 837	5
1 Labatt, *Master and Servant* (1913), pp. 102–103	8
Restatement of Agency, § 79, comment (a)	8

775562—48

Miscellaneous—Continued Page

Robertson and Kirkham, *Jurisdiction of the Supreme Court*, pp. 478–484, 526–527 ..... 6, 7

War Shipping Administration Form GAA 4–4–42, 7 Fed. Reg. 7561; 46 C. F. R., 1943 Cum. Supp., p. 11427, sec. 306.44 ..... 2, 9

War Shipping Administration General Order No. 32, April 22, 1943, 8 F. R. 5414; 46 C. F. R., 1943 Cum. Supp., p. 11359, secs. 304.20–304.29 4

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 523

ARTHUR SHILMAN, PETITIONER

v.

THE UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION AND GRACE LINE, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the Southern District of New York (R. 41–43) is reported at 1947 A. M. C. 928. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 52–58) is not yet reported.

JURISDICTION

The decree of the Circuit Court of Appeals for the Second Circuit was entered December 4, 1947 (R. 59). The petition for a writ of certiorari was filed January 12, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the

Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether petitioner, a civil service employee of the United States, may recover wages earned while employed as a seaman aboard a government vessel in a suit against respondent which acted as agent of its disclosed principal, the United States, in the conduct of certain business of the vessel.

STATEMENT

Respondent Grace Line, Inc., was a ship's husband or general agent appointed by the United States under the standard form of agreement to manage the accounting and other shoreside business of the S. S. *Eli Whitney* and other vessels owned and operated by the United States through the War Shipping Administration.[1] This suit was originally brought by petitioner against the United States of America and the War Shipping Administration as well as against the present respondent Grace Line, Inc., alleging them to be jointly and severally liable for the sum of $200.00 wages due him (R. 2–5). It alleged that these three parties "owned, operated, controlled and managed a certain vessel known as the S. S. *Eli Whitney*" (R. 2–3), that petitioner was employed by them as a seaman in the service of that vessel and "signed regular merchant shipping articles

[1] War Shipping Administration Form GAA 4–4–42, 7 Fed. Reg. 7561, 7562; 46 C. F. R., 1943 Cum. Supp., p. 11427, sec. 306.44.

for a voyage aboard said vessel in the capacity of wiper" (R. 3). It further alleged that the sum of $200.00, owing to petitioner as wages, was paid over to the United States Army by Grace Line, Inc., in payment of a fine of $200.00 levied on petitioner by an Army court martial without his authorization of such payment and without statutory or other authority (R. 4). The United States Attorney filed a joint answer on behalf of all three respondents (R. 5–9) and the case was submitted to the district court on an agreed statement of facts (R. 9–13).[2] That court held that the court martial had jurisdiction of petitioner, that the fine was a debt of petitioner to the United States and his wages an indebtedness of the United States to him, and that they were mutual debts which could be offset against each other; it ordered petitioner's suit dismissed as to all three parties (R. 42–43). On appeal, the court below reversed as to the United States, holding petitioner entitled to recover his wages from it as his employer, but affirmed the dismissal of respondent, its agent (R. 52–59).

The facts which gave rise to petitioner's claim against respondent may be briefly summarized. The S. S. *Eli Whitney* was documented and registered in the name of the United States and was operated in cooperation with the Armed Forces for the purposes of the prosecution of the war in North

[2] The parties stipulated that the War Shipping Administration was not a suable entity (R. 10).

Africa (R. 10). Respondent, Grace Line, Inc., attended to the business of the *Whitney* for the United States in accordance with the standard form of General Agency Agreement (R. 10). Petitioner was employed by the United States aboard the *Whitney* as a seaman in the service of the vessel (R. 10). When so employed, he signed the regular ship's articles for a voyage aboard the *Whitney* in the capacity of wiper in the engine department (R. 10). While so employed from May 25 to August 1, 1943, he earned the net sum of $406.86 (R. 10). On July 31, 1943, while the *Whitney* was at the Port of Tunisia, North Africa, petitioner was arrested by the United States Army, was tried by special court martial for the theft of an adding machine from the French Navy, found guilty and sentenced to pay to the United States a fine of $200.00 and to be confined for three months (R. 11). Petitioner was discharged from the *Whitney* at Bizerte, Tunisia, and the purser offered to pay him the wages then due him less the amount of the fine, but petitioner refused to accept payment (R. 12). Thereafter, about November 10, 1943, a claim by petitioner was submitted for allowance in accordance with the rules and regulations[3] governing seamen's claims under Public Law 17, 78th Congress (Act of March 24, 1943, 57 Stat. 45; 50 U. S. C. App., Supp. V, 1291), and was not

[3] War Shipping Administration General Order No. 32, April 22, 1943; 8 Fed. Reg. 5414; 46 C. F. R., 1943 Cum. Supp., p. 11359, secs. 304.20–304.29.

allowed (R. 13). The amount of the fine of $200.00 was withheld from petitioner's wages by respondent Grace Line, Inc., as agent for the United States (R. 13). Subsequently, on November 16, 1943, petitioner without protest accepted payment by respondent of the balance of his wages less the amount of the fine (R. 13).

ARGUMENT

Petitioner, a civil service seaman employed on a War Shipping Administration vessel [4] who was convicted of theft by an Army court martial, brought this suit to contest the withholding of $200.00 of his wages in payment of his unpaid fine. The issue thus raised was presented to the district court on an agreed statement of facts which expressly stipulated that petitioner was employed by the United States (R. 10). Petitioner's counsel, in presenting the case to the district judge, specifically conceded that "the United States was the creditor and operator of the vessel" (R. 36). The court below, reversing the judgment of the district court, held that the United States, as employer, could not lawfully withhold any part of petitioner's wages

[4] Employment on a government-owned vessel operated by the War Shipping Administration as successor to the Maritime Commission made petitioner an unclassified civil service employee of the United States. Civil Service Rules, Schedule A, sec. xxi (1), Executive Order No. 9004, 7 F. R. 2; Executive Order No. 9247, 7 F. R. 837; 5 C. F. R., 1943 Cum. Supp., p. 1488, sec. 50.21.

by reason of the fine (R. 53–57). The Government will not apply for certiorari to review this action of the court below and payment of the judgment will be made in due course. Payment will, of course, extinguish petitioner's cause of action. *Little* v. *Bowers,* 134 U. S. 547, 557–559; *Dakota County* v. *Glidden,* 113 U. S. 222, 225; cf. *Pease* v. *Rathbun-Jones Eng. Co.,* 243 U. S. 273, 281.

1. The heart of petitioner's contention here is that the court below erred in failing to find that the equivalent of an "employer-employee" relationship existed between himself and respondent Grace Line, the Government's agent (Pet. 4–5, 11, 12, 14). Petitioner repeatedly characterizes Grace Line as the operator of the *Whitney* and even asserts that the United States so conceded (Pet. 2, 3, 9, 25). Without regard to the fact that these supporting assertions by petitioner are contrary to the record, we submit that petitioner lacks standing to press the question raised by his petition. Petitioner has judgment against the United States, payment of which will be made in due course, and he cannot suggest financial unreliability of the Government. Under this Court's decisions, petitioner, the successful party in the court below, cannot here "* * * complain that it is aggrieved by its own success * * *." *New Orleans* v. *Emsheimer,* 181 U. S. 153, 154; Robertson and Kirkham, *Jurisdiction of the Supreme Court,* pp. 526–527. The petition

for certiorari, in recognition of this lack of standing, states that many seamen have brought contract suits against the Government's agents which, if dismissed, might be barred as to the Government by the two-year limitation statute (Pet. 2). This assertion is not in accord with the records of the Department of Justice. Our records indicate that relatively few seamen have omitted to sue the United States even in those instances where they have brought suit against the agent of the Government.[5] But assuming the existence for other cases of the statute of limitations question relied on by the petition herein, no such question is presented by this case. And we believe it well settled that the petitioner cannot obtain standing herein by asking this Court "* * * to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it * * *." *Tyler* v. *Judges of Court of Registration,* 179 U. S. 405, 409; Robertson and Kirkham, *supra,* pp. 478–484. If, as petitioner contends, the statute of limitations point is important in other cases, "* * * so much the more important is

[5] Suits by Government seamen are under the supervision of the Admiralty and Shipping Section of the Department and reports are received in respect of suits against agents as well as those against the United States itself. Pursuant to the agency agreement, the United States is obligated for any recovery effected and defense of such actions is undertaken by the Department of Justice whenever requested by the Maritime Commission.

it that it should not be decided in a case where there is nothing in dispute * * *." *Little* v. *Bowers,* 134 U. S. at 558. We accordingly submit that petitioner's application for certiorari is no more than a request for an advisory opinion by this Court, a type of request which has been traditionally declined. *Coffman* v. *Breeze Corporations,* 323 U. S. 316, 324–325.

2. Petitioner urges that a reversal of the judgment below is compelled by the reasoning which motivated the majority opinion of this Court in *Hust* v. *Moore-McCormack Lines, Inc.,* 328 U. S. 707 (Pet. 2, 14). Petitioner argues that in that case this Court established that the common law rules of principal and agent, which regulate the liability to third parties of the agent of a disclosed principal,[6] have no application when the disclosed principal is the United States (Pet. 12–14). In support of this argument, petitioner cites the language of the majority opinion in the *Hust* case (328 U. S. at 719) that the decision there "is equally applicable to all other maritime rights

[6] See 1 Labatt, *Master and Servant* (1913), pp. 102–103: "It is well settled that, where an employee, acting under the express or implied authority of his principal, engages servants to perform work for the benefit of his employer, the principal, and not the employee, is in law the master of the servants so engaged. This doctrine is an obvious and necessary consequence of the fact that, in the case supposed, the power of controlling the servants, even though it may normally be exercised by the agent after they are hired, really resides in the principal, and may at any time be called into active exercise." Cf. *Restatement of Agency,* § 79, comment (a).

and remedies dependent upon existence of the 'employer-employee' relation" (Pet. 13). He concludes that this Court thereby intended that seamen are to be deemed the employees of the "operating agent" (Pet. 14), and implies that respondent Grace Line is an "operating agent."

Assuming petitioner's standing to raise this question, the inapplicability of his argument to this case is apparent. Unlike the situation presented by the record in the *Hust* case, where the answer of Moore-McCormack admitted that it was the operator of the vessel (October Term, 1945, No. 625, R. 6), and that concession was accepted by the majority of this Court (see 328 U. S. at 717, 718, 720, 721, 724, 727, 730, 732), here the record shows respondent was not operating the vessel. Respondents' answer denied that Grace Line owned, operated or controlled the vessel (R. 6). Petitioner conceded in the trial court that the United States was operator of the vessel (R. 36) and the Agreed Statement of Facts expressly states respondent Grace Line's relation was only that it "attended to the business of said vessel in accordance with the terms of the General Agency Agreement" in the standard form GAA 4-4-42 (R. 10, 15).[1] The agreed statement further stipulated that petitioner "was employed by the United States" as a seaman aboard the *Whit-*

[1] War Shipping Administration Form GAA 4-4-42, 7 Fed. Reg. 7561; 46 C. F. R., 1943 Cum. Supp., p. 11427, sec. 306.44.

ney (R. 10).[8] We submit that, on these facts, respondent Grace Line's status is fixed by the decision in *Caldarola* v. *Eckert*, 332 U. S. 155, where this Court held that the ship's husbands or general agents employed by the United States to manage the accounting and other business operations of its vessels in acordance with the standard form GAA 4–4–42 agreement do not thereby become the owners *pro hac vice* or operators of Government vessels. They are not, as had been conceded in *Hust*, the "operating agents."[9]

Thus, the essential problem presented by the effect of the GAA 4–4–42 agreement on the rights

[8] Petitioner's statement that the question here is whether a seaman employed on a vessel operated by a private steamship company may sue the company (Pet. 3) and his assertions that it was conceded that the vessel was operated by respondent Grace Line (Pet. 2, 9) disregard the record. See *supra*, p. 6.

[9] It is not true, as petitioner implies (Pet. 13), that general agents serving the Government under GAA 4–4–42 performed the same functions as private shipping companies operating their own ships or operating Government vessels formerly demised to them for operation under "operating agreements" as in *Brady* v. *Roosevelt S. S. Co.*, 317 U. S. 575, or "bareboat charters" as in *Carroll* v. *United States*, 133 F. 2d 690 (C. C. A. 2). On the contrary, their authority stops at the water's edge for they are mere ship's husbands or agents to manage the accounting and certain classes of shoreside business operations of the Government's vessels. See letter of the General Counsel, U. S. Maritime Commission, to Assistant Attorney General Sonnett, Reply Brief for Respondent Thor Eckert & Co., *Caldarola* v. *Eckert*, No. 625, Oct. T., 1946, Appendix, pp. 43–66. Operation of the vessels themselves is directly by the United States and it is expressly

of seamen employed by the United States aboard its vessels has been fully explored so far as the needs of this case are concerned. The statutes and the general maritime law [10] alike place liability for wages exclusively upon the master and the operating owner or owner *pro hac vice*. Never has it been suggested that liability for wages also rested upon the ship's husband. The rights of the seaman to recover his wages are expressly provided in Title 46 of the Code. The seaman may recover wages from the master and owner whether or not the vessel earns freight. 46 U. S. C. 592. If the seaman is discharged without his fault or consent, the discharge is deemed wrongful and he recovers from the master or owner his earned wages and one month's additional wages as a sort of liquidated damages.

---

provided that "the Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel" and "the officers and members of the crew shall be subject only to the orders of the Master" and not of any other Government agent (Art. 3A (d) of GAA 4–4–42).

[10] It is settled that the seaman has "a threefold remedy for his wages, against the master, the owner, or the ship, and may proceed, at his election, against either of the three in admiralty or against the master or the owner at common law." See *Temple* v. *Turner*, 123 Mass. 125, 128; *Bishop* v. *Shepherd*, 23 Pick. (Mass.) 492, 495–496. And see *Everett* v. *United States*, 277 Fed. 256, 258 (W. D. Wash.), affirmed, 284 Fed. 203 (C. C. A. 9), certiorari denied, 261 U. S. 615; *The A. Heaton*, 43 Fed. 592, 595 (C. C. D. Mass.); (*Bronde* v. *Haven*, 4 Fed. Cas. No. 1924 at p. 212 (E. D. Pa.); *Conlon* v. *Hammond Shipping Co.*, 55 F. Supp. 635 (N. D. Cal.).

46 U. S. C. 594. If upon discharge, payment of a seaman's wages is delayed without reasonable cause, the seaman may recover from the master or owner his earned wages and a penalty of two days' pay for each day's delay. 46 U. S. C. 596. No advance of wages may be paid nor any allotment made except as provided by statute, and if paid, will not absolve the master or owner from full payment of wages when earned. 46 U. S. C. 599.

We submit that it is thus clear that respondent Grace Line, as ship's husband, had no liability to petitioner on his wage claim herein. Nor can it be successfully contended that the decision below did not result from a proper consideration of the War Shipping Administration (Clarification) Act of March 24, 1943, c. 26, 57 Stat. 45 (50 U. S. C. App., Supp. V, 1291). As this Court held in the *Hust* case, the purpose of the Clarification Act was to assure both prospectively and retrospectively that seamen on all vessels controlled by the Government should have the right to sue the United States under the Suits in Admiralty Act, 1920 (41 Stat. 525; 46 U. S. C. 741 *et seq.*) and incidentally to preserve such other rights as they might have. 328 U. S. at 726, 727, 729. The Act did not give seamen employed by the United States on its vessels a new right against government agents who are not "operating agents" but only ships' husbands or "general agents" employed to manage the accounting and other shoreside business of the Government's vessels.

3. For the reasons set forth above, we submit that petitioner has no standing with regard to the question which he seeks to raise, and that, in any event, that question was correctly resolved by the decision below. Petitioner's position gains no strength by his assertion of a conflict between the decision below and *Aird* v. *Weyerhaeuser S. S. Co.*, 1947 A. M. C. 1503 (C. C. A. 3), decided September 16, 1947 (Pet. 16). The *Aird* case has been ordered for rehearing before the Third Circuit Court of Appeals *in banc*. That case was, of course, called to the attention of the court below by the parties prior to the decision herein. The *Warren* case, referred to by petitioner (Pet. 16–17), was reargued before District Judge Medina following the decision herein, and is presently pending before him.

The other cases in the lower state and federal courts cited by petitioner present a number of divergent situations as to all of which it can scarcely be expected that a decision of this case will be received as dispositive. Whether in any pending case where recovery is allowed against the agents the United States will authorize payment or direct that further proceedings be had cannot now be determined.[11]

---

[11] Of the other cases to which petitioner refers (Pet. 20–21), the *Martinez*, *Gaynor*, *Fink*, and *Healy* cases are now pending on appeal. In the *Saluk* and *Cohen* cases, payment was authorized on the ground that the equities and the amounts involved did not justify further proceedings, since other cases involving similar questions were pending.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Acting Assistant Attorney General.

SAMUEL D. SLADE,
LEAVENWORTH COLBY,
Attorneys.

FEBRUARY 1948.

U. S. GOVERNMENT PRINTING OFFICE: 1948